went off largely on the ground of unfair competition. Under this latter doctrine, it is only necessary to prove that the defendant is selling his goods as those of the plaintiff, in order to obtain an injunction. *Croft* v. *Day* (1843) 7 Beav. 84. See 2 COLUMBIA LAW REVIEW, 245. A fraudulent intent does not have to be shown, it being sufficient that the public is misled. *Waterman* v. *Shipman, supra.* Yet the court, in the principal case, laid stress on the fact that no fraud or intent to deceive, had been found at the trial in the court below. As the action was brought for an invasion of property rights, this finding was immaterial. But if the court was viewing the case from the standpoint of unfair competition, a different conclusion should have been reached, since the public was bound to be misled by the similarity of the articles. Thus in *Shaver* v. *Heller & Merz Co.* (1901) 108 Fed. 821, the plaintiff prayed that the defendants be enjoined from using the names "American Ball Blue" and "American Wash Blue," asking for relief on the ground of unfair competition. An injunction was granted. Had the plaintiff framed his bill on the ground that there was an infringement of his trade-mark, no relief could have been given, since a geographical name cannot be monopolized, *Canal Co.* v. *Clark* (1871) 13 Wall. 311; and because names given to different brands of goods manufactured by the same party are held to be descriptive only of the quality of the article. *Beadleston & Woerz* v. *Cooke Brewing Co.* (1896) 74 Fed. 229.

ATTACHMENT OF CHATTELS TO THE FREEHOLD.—The law of fixtures has given rise to many apparently contradictory decisions, partly because of a failure to discriminate between the questions whether articles have been so affixed to the freehold as to become part of the realty, and whether, if they are so affixed, the tenant has the right to remove them during the term, and partly because many of the cases involve questions of degree, and depend upon facts peculiar to each case. There are cases which do not admit of doubt, "where the subject or mode of annexation is such, as that the attributes of personal property cannot be predicated of the thing in controversy, as where the property could not be removed without practically destroying it, or where it or part of it is essential to the support of that to which it is attached." FOLGER, J., in *Tift* v. *Horton* (1873) 53 N. Y. 380. On the other hand, there are cases where the court will rule as matter of law that articles have not lost their character of chattels. *Cosgrove* v. *Troescher* (1901) 62 App. Div. 123. Between these extremes, however, lies a debatable ground, and it is in this field that the apparent conflict arises. The rule is clear in America that, in this class of cases, the intention of the person who affixed the articles is to govern—not the secret intention, but the "intention implied and manifested by his act." *Hopewell Mills* v. *Taunton Savings Bank* (1890) 150 Mass. 519; *Snedeker* v. *Warring* (1854) 12 N. Y. 170. In England, on the contrary, the law has not been so clear. The older cases were supposed by Lord HARDWICKE in

Lawton v. *Lawton* (1743) 3 Atk. 12, and by Lord MANSFIELD in *Lawton* v. *Salmon* (1782) 1 H. Bl. 259n. to decide that a chattel became part of the realty merely because of its physical attachment to the freehold. In the latter case this was said to be still the law subject to two exceptions or "relaxations," namely, the right of a tenant for years to disannex "trade fixtures" during his term, which had been recognized in *Henry's Case* (1505) Y. B. 20 Hen. VII, 13, pl. 24, and the right of a life tenant or his executor to disannex and remove "ornamental fixtures." The same opinion was expressed by Lord ELLENBOROUGH in *Elwes* v. *Maw* (1802) 3 East 38, who likewise seems to have regarded physical attachment as proving that the chattel had become realty and the only question for him to decide therefore as being "whether a particular fixed instrument, machine, or even building, should be considered removable by the executor. And in *The King* v. *Otley* (1830) 1 B. & Ad. 161, it was decided that a mill could not be real estate, because it rested of its own weight on a foundation of bricks, the wood-work not being inserted in the foundation. The rule that physical attachment was necessary, however, was later abandoned, and in *Ex Parte Ashbury* (1869) L. R. 4 Ch. 630 it was held that duplicate parts of a machine, although not in use and unattached, passed to the mortgagees of a mill and its fixtures, on the ground that "the machine with a duplicate set is a more perfect machine." Intention was recognized as a test of whether an article has become part of the realty by MARTIN B., in *Elliott* v. *Bishop* (1854) 10 Ex. 496. "The term (fixtures) does not include everything which is fixed, and so rendered immovable. The object and purpose in fixing must be looked at; and if the chattels be fixed to the building merely for the more complete enjoyment and user of it as a chattel, it is not a fixture at all in the technical legal meaning of the word, but still remains a chattel." BLACKBURN, J. expressed a similar view in *Holland* v. *Hodgson* (1872) L. R. 7 C. P. 328, 334.

In the light of these apparently inconsistent authorities the recent decision of the House of Lords in *Leigh* v. *Taylor* [1902] A. C.——, is of especial interest. A tenant for life fastened several large tapestries to frames and fitted them into panels by means of nails and screws, and changed the wall paper to harmonize with the tapestries. When in the Court of Appeal (*sub nom. Ward* v. *Taylor* [1901] 1 Ch. 523) the case seems to have been decided on the ground that, though the articles were fixtures, they came within the exception of ornamental fixtures and were removable by the life-tenant or her executors. The House of Lords, however, while reaching the same result, do so on the theory that the tapestries never lost their character as chattels. The intention test is expressly adopted. "Where," said Lord HALSBURY, "although it may be attached in some form or another to the walls of the house, yet having regard to the nature of the thing itself, and the purpose of its being placed there, it is not intended to form part of the realty, but is only a mode of enjoyment of the thing while the person is temporarily

there, and is there for the purpose of his or her enjoyment, then it is removable and goes to the executor." The contention that this is a change in the law is denied. "My own view," he continues, "is that going back for some centuries, the real differences of opinion, which apparently on the surface have been entertained by different judges, have not been at bottom differences in the law at all, but the facts have been regarded in different aspects according to the fashion of the time, the mode of annexation, and the mode in which houses were built, and the degree of attachment which from time to time became necessary or not according to the nature of the structure which was being dealt with. The principle appears to me to be the same to-day as it was in the early times, and the broad principle is that, unless it has become part of the house in any intelligible sense, it is not a thing which passes to the heir."

This seems opposed to the expressions in *Lawton* v. *Lawton*, *supra*, and *Lawton* v. *Salmon*, *supra*. *D'Eyncourt* v. *Gregory* (1866) L. R. 3 Eq. 382, which was criticized when the principal case was in the Court of Appeal, is perhaps reconcilable with it when examined in the light of the peculiar facts of the case. There a tenant for life refitted the interior of the house, and rearranged the whole plan of decoration, and fastened tapestries to the walls in much the same way as in the principal case, and the tapestries were held to be part of the realty. In the *D'Eyncourt* case, however, the room was arranged for the tapestries, and the panels made to fit the frames, while in the principal case the frames were fastened without disarranging the room. The *D'Eyncourt* case, therefore, seems to be capable of the explanation given by VAUGHAN WILLIAMS, L. J., in *Ward* v. *Taylor*, *supra*, that Lord ROMILLY inferred from all the facts of the case that the tapestries were affixed to the walls to improve the freehold, and not for the purpose of their enjoyment as chattels. But *D'Eyncourt* v. *Gregory* is a comparatively recent case, decided since the purpose of the annexation was recognized as of importance in *Elliott* v. *Bishop*, *supra*. The older cases certainly contain no intimation of any such view and the common law rule has been generally supposed to regard physical attachment as the conclusive test. See HOLMES, J., in *Carpenter* v. *Walker* (1866) 140 Mass. 416. When the relaxation in favor of the tenant's right to remove trade fixtures was recognized intention became of importance in determining whether a given article came within the exception. It was perhaps only natural that in course of time the purpose of annexation should be looked at to discover not only whether a given portion of the realty might be disannexed, but also to determine whether a chattel, though physically attached, had retained its character as a chattel. Since the decision of the principal case, however, it may be regarded as established law in England as well as in the United States that the question of what is realty is to be determined by the degree and the object of the annexation as indicating the intention with which the article in dispute was attached.